

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANIEL OGLESBY,)
Petitioner,)
v.) No. 4:06-CV-1482 CAS
MICHAEL BOWERSOX and)
CHRIS KOSTER, Attorney General for)
the State of Missouri,)
Respondents.)

ORDER

This matter is before the Court on state prisoner Daniel Oglesby's action pursuant to 28 U.S.C. § 2254. This case was referred to United States Magistrate Judge Thomas C. Mumment, III for report and recommendation on all dispositive matters and for final disposition on all non-dispositive matters, pursuant to 28 U.S.C. § 636(b).

On November 12, 2009, Judge Mumment filed a Report and Recommendation of United States Magistrate Judge which ordered that the Attorney General for the State of Missouri, Chris Koster, be added as a respondent in this case and recommended that Daniel Oglesby's petition for writ of habeas corpus be denied.

Petitioner filed timely objections to the Report and Recommendation, asserting that a ruling on this motion should be held in abeyance pending a ruling on petitioner's other § 2254 action, which challenged his twelve year sentence for attempting to produce or manufacture a controlled substance. See Oglesby v. Bowersox, Case No. 4:06-CV-126 AGF (E.D. Mo. opinion dated Mar. 12, 2009).

At the time Judge Mumment filed the Report and Recommendation of United States Magistrate Judge

and at the time petitioner filed his objections, petitioner's other § 2254 action was pending on appeal. On January 29, 2010, the Eighth Circuit affirmed the District Court's denial of petitioner's other § 2254 motion. See Oglesby v. Bowersox, --- F.3d ----, 2010 WL 323216 (8th Cir. Jan. 29, 2010). Therefore, petitioner's objection that this action be held in abeyance pending resolution of the appeal of his other § 2254 action by the Eighth Circuit Court of Appeals is moot.

In his objections, petitioner reasserts his non-specific argument that he is entitled to equitable tolling due to a "miscarriage of justice" and "structural defect." The Court has carefully reviewed petitioner's objections and the entire record of this matter. Following de novo review, the Court concurs in the recommendation of the Magistrate Judge. Petitioner's objections are overruled.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Judge is **sustained, adopted and incorporated** herein. [Doc. 12]

IT IS FURTHER ORDERED that Daniel Oglesby's Petition for Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254 is **DENIED**. [Doc. 1]

IT IS FURTHER ORDERED that this matter is **DISMISSED**, with no further action to take place herein.

An appropriate judgment will accompany this order.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 11th day of February, 2010.